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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 030455; 190250-1580
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/686,433	Filed October 14, 2003
	First Named Inventor Daniell, et al.	
	Art Unit 2457	Examiner Lai, Michael C.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.
 assignee of record of the entire interest.
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
 (Form PTO/SB/96)
 attorney or agent of record. 55012
 Registration number _____
 attorney or agent acting under 37 CFR 1.34.
 Registration number if acting under 37 CFR 1.34 _____

/afb/

 Signature
Anthony F. Bonner

 Typed or printed name
770-933-9500

 Telephone number
August 14, 2009

 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
 Submit multiple forms if more than one signature is required, see below*.

<input type="checkbox"/>	*Total of _____ forms are submitted.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Confirmation Number: 7279
Daniell, *et al.* Group Art Unit: 2457
Serial No.: 10/686,433 Examiner: Lai, Michael C.
Filed: October 14, 2003 Docket No. 030455; 190250-1580
For: Processing Rules for Digital Messages

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:
Appellants submit the following remarks in support of a Request for a Pre-Appeal Brief Conference.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 20-0778.

REMARKS

Appellants submit that the following clear legal deficiency exists in the rejection.

Namely, the previous Office Action and Advisory Action neglect to acknowledge that *Malik* has the same filing date as the present application. Further, the Response submitted June 2, 2009 clearly illustrates that *Malik* does not claim the benefit of any provisional application and thus has an effective filing date that is inapplicable as prior art for the present application.

I. Status

Claims 26 and 27 are rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. Claims 1, 2, 10, 11, 18 – 20, and 25 – 27 are rejected under 35 U.S.C. §102(b) as allegedly being unpatentable over U.S. Publication Number 2004/0078445 (“*Malik*”).

II. Rejections Under 35 U.S.C. §101

The Office Action indicates that claims 26 and 27 stand rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. Appellants traverse this rejection but do not otherwise address this rejection at this time.

III. Rejections Under 35 U.S.C. §102

A. Claims 1, 2, 10, 11, 18 – 20, and 25 – 27 are Allowable Over Malik

The Office Action indicates that claims 1, 2, 10, 11, 18 – 20, and 25 – 27 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Publication Number 2004/0078445 (“*Malik*”). Appellants respectfully traverse this rejection. As indicated above, *Malik* has a filing date of October 14, 2003, which is the same filing date as the present

application. The Examiner argues that *Malik* claims priority to a number of provisional applications, thus giving *Malik* an earlier effective filing date. Appellants respectfully disagree.

More specifically, despite the indication of priority on the front page of the *Malik* published application (U.S. Application Number 2004/0078445), in the supplemental response submitted June 2, 2009 for the present application, Appellants submitted numerous documents illustrating that *Malik* never claimed priority to any provisional application. Included in the June 2, 2009 submission is:

- (1) The corrected filing receipt dated February 26, 2004 for the 10/685,970 application (*Malik*), illustrating that no domestic priority is claimed (see PAIR for Application Number 10/686,433 – “Request for Corrected Filing Receipt” submitted 06-02-2009, page 1 of 5);
- (2) The original filing receipt for *Malik* dated January 15, 2004, illustrating an incorrect domestic claim to priority (see PAIR for Application Number 10/686,433 – “Request for Corrected Filing Receipt” submitted 06-02-2009, page 3 of 5);
- (3) The request to correct the January 15, 2004 filing receipt dated February 6, 2004.

This document clearly indicates that the domestic priority data is incorrect (see PAIR for Application Number 10/686,433 – “Request for Corrected Filing Receipt” submitted 06-02-2009, page 4 of 5); and

- (4) The first page of *Malik* as filed, clearly indicating that the provisional applications are incorporated by reference only and not claimed for priority (see PAIR for Application Number 10/686,433 – “Request for Corrected Filing Receipt” submitted 06-02-2009, page 5 of 5).

While the Examiner indicated that these documents are not available in PAIR under U.S. Application Number 10/685,970 (*Malik*), Appellants nevertheless submit that these documents are copies of the actual documents submitted and/or received from the United States Patent and Trademark Office for the *Malik* application.

Consequently, *Malik* is only afforded its actual filing date (which is the same date as the present application) because these provisional applications were only incorporated by reference and not claimed for priority. As such, the filing dates of those provisional applications cannot be relied upon to reject the present application. For at least this reason, Appellants submit that there is clear error in the rejection and submit that the pending claims are allowable.

CONCLUSION

For at least the reasons set forth above, favorable reconsideration and allowance, or the re-opening of prosecution on the merits of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

/afb/
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